No. 93-409

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

BRAINERD AREA CIVIC CENTER, BRAINERD AMATEUR HOCKEY ASSOCIATION, NATIONAL EXCHANGE CLUB OF LITTLE FALLS, LITTLE FALLS YOUTH HOCKEY ASSOCIATION, SKI GULL, INC., MARCH OF DIMES, CLIMB, INC., CEDAR RIVERSIDE PEOPLE'S CENTER AND EXCHANGE CLUB OF SOUTHWEST MINNEAPOLIS,

Petitioners,

v.

COMMISSIONER OF REVENUE, STATE OF MINNESOTA,

Respondent.

MINNESOTA MULTIPLE SCLEROSIS SOCIETY AND EPILEPSY FOUNDATION OF MINNESOTA, INC.,

Petitioners,

v.

COMMISSIONER OF REVENUE, STATE OF MINNESOTA,

Respondent.

On Petition For Writ Of Certiorari To The Minnesota Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the decision of the Minnesota Supreme Court upholding the constitutionality of a graduated tax on receipts from highly regulated, not-for-profit charitable gambling operations conflict with the decision of this Court in *Stewart Dry Goods Co. v. Lewis*, 294 U.S. 550 (1935)?

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OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 499 N.W.2d 468 (1993) and is reproduced in the appendix to the petition. The Minnesota Supreme Court affirmed the decision of the Minnesota Tax Court. The Tax Court decision is not officially reported, but is available in the Westlaw electronic data base at 1992 WL 297620.

STATEMENT OF THE CASE

Petitioners are charities conducting lawful gambling operations within Minnesota under chapter 349 of the Minnesota Statutes. Their activities include operating pull-tab and tipboard games.[1]

Respondent is the tax administrator for the State of Minnesota.

Under Minnesota law, only charities and similar organizations may conduct lawful gambling (also called charitable gambling).[2] The only forms of gambling that

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[1] A pull tab game consists of a set of individual sealed tickets with hidden symbols. One or more tickets has been designated in advance as a winner. A player purchases a ticket and removes the seal to discover if he is a winner. A tipboard is a board marked with a grid. Each section of the grid contains hidden symbols, one or more of which has been designated in advance as a winner. A player purchases the right to remove the cover from a section to discover if he is a winner.

[2] Organizations which may conduct charitable gambling are fraternal, religious, veterans, and other nonprofit organizations. Minn. Stat. §§ 349.16 and 349.12, subd. 28 (1992).

are permitted are bingo, raffles, paddlewheels, pull-tabs and tipboards. Minn. Stat. §§ 349.16 and 349.12, subd. 24 (1992). Gambling activities are highly regulated and controlled for the express purpose of preventing their commercialization, insuring the integrity of operations, and insuring the use of profits only for specifically permitted purposes. Minn. Stat. ch. 349 and § 349.11 (1992).

Minnesota Statutes chapter 349 also provides for the taxation of gambling. Minn. Stat. § 349.212, subd. 6 (1992) imposes a graduated tax on the "combined receipts" of each gambling operator. By definition "combined receipts" is essentially the gross receipts from tipboards and pull-tab gambling.[3]

The tax is graduated according to the amount of the gambling operator's combined receipts for the year. No tax is imposed on the organization's first $500,000 of gross receipts. A two percent tax rate is imposed on the operator's gross receipts in excess of $500,000 but less than $700,000. A four percent tax is imposed on gross receipts in excess of $700,000 but less than $900,000. A six percent tax is imposed on the operator's gross receipts in excess of $900,000.

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[3] "Combined receipts" is the sum of an operator's gross receipts from lawfull gambling less the receipts directly derived from the conduct of bingo, raffles, and paddlewheels. Minn. Stat. § 349.212, subd. 6 (1992). "Gross receipts" from "lawful gambling" consists of all receipts from bingo, raffles, paddlewheels, tipboards, pull-tabs, admissions, and accumulations (such as interest) on gambling proceeds. Minn. Stat. § 349.12, subds. 21 and 24 (1992).

Petitioners attacked the combined receipts tax in the Minnesota Tax Court asserting, among other things, that it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as construed in *Stewart Dry Goods Co. v. Lewis*, 294 U.S. 550 (1935). Petitioners claim a refund of all combined receipts taxes paid since October, 1989, when the tax on pull-tabs and tipboards was changed from a tax on gross receipts less prizes to the combined receipts tax. The Minnesota Tax Court affirmed the constitutionality of the tax, holding that *Stewart Dry Goods* was distinguishable and did not govern this case. On certiorari to the Tax Court, the Minnesota Supreme Court affirmed, again distinguishing *Stewart Dry Goods*.

REASONS FOR DENYING THE PETITION

Respondent Commissioner of Revenue, State of Minnesota respectfully requests that this Court deny the Petition For Writ of Certiorari seeking review of the Minnesota Supreme Court's decision in this case.

I. THE DECISION OF THE MINNESOTA SUPREME COURT IN THIS CASE DOES NOT CONFLICT WITH THE DECISION IN *STEWART DRY GOODS*.

Contrary to Petitioner's argument, this case is not identical to *Stewart Dry Goods Co. v. Lewis*, 294 U.S. 550 (1935), and the Minnesota Supreme Court's decision in this case does not conflict with this Court's decision in *Stewart*. The Minnesota Supreme Court correctly determined that this case is distinguishable from *Stewart Dry*

Goods.[4] Because the Minnesota Supreme Court's decision does not conflict with *Stewart* or any other binding precedent, the petition should be denied.

A. Unlike The Gross Receipts Tax In *Stewart Dry Goods*, Minnesota's Combined Receipts Tax Is Not A General Business Tax, But Is Imposed Only On Licensed Charitable Gambling Operations Whose Sales, Prizes, Overhead, And Operating Expenses Are Strictly Regulated.

In *Stewart Dry Goods* this Court held that a Kentucky graduated gross sales tax on retailers was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The Kentucky sales tax was imposed on all retailers, including all types of organizations, all methods of merchandising, and all types of commodities sold. 294 U.S. at 556. This Court concluded that the facts

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[4] At the same time and as part of the same analysis the Minnesota Supreme Court distinguished its own decision in *National Tea Co. v. State*, 286 N.W. 360 (1939), *vacated and remanded*, 309 U.S. 551, *reinstated on remand*, 294 N.W. 230 (1940) (per curiam). In that case the Minnesota Supreme Court struck down a graduated gross receipts tax on chain stores. The Minnesota Court described the tax as practically identical to the tax invalidated in *Stewart Dry Goods* and also cited *Valentine v. Great Atlantic & Pacific Tea Co.*, 299 U.S. 32 (1936) (per curiam), which affirmed the invalidity of a graduated tax based on gross receipts from sales. In *National Tea*, this Court granted certiorari and vacated the decision to permit the Minnesota Court to clarify whether it had relied solely on federal equal protection as construed in *Stewart Dry Goods*, or whether it had also relied on independent state uniformity guaranties. On remand the Minnesota Supreme Court reaffirmed that it had also relied on the independent state grounds.

did not support Kentucky's contention that the graduation of the sales tax reasonably approximated net earnings and ability to pay. *Id.* at 558. Nor did the facts support the conclusion that there was even rough proportionality, within wide limits of tolerance, between gross sales and net profits or net worth. *Id.* at 559. The Court observed that net profits vary with the character of the business, with different kinds of merchandise, and from year to year in the same enterprise as well as by volume. *Id.* at 558-59. This Court concluded that "the graduated rates imposed were not intended to bear any relation to net profits." *Id.* at 559.

In contrast to the Kentucky tax considered in *Stewart*, the Minnesota tax is imposed under conditions where there is a much more direct relationship between gross receipts, net profits, and ability to pay and where gross receipts is a good measure of the relative power of the organizations. The Minnesota tax is imposed only upon a particular activity (the sale of pull-tabs and tipboards) on a non-commercial basis by a particular type of entity (charities and nonprofits). This charitable gambling activity occurs under closely licensed and regulated conditions.

The following examples indicate the scope and detail of the regulation. As previously noted, only charities and other nonprofits can sell pull-tabs and tipboards. Regulations limit the price of pull-tabs and tipboards ($2.00) and limit the prizes per winning ticket (pull-tabs = $250; tipboards = $500). The overhead and operating expenses are regulated. Only specified expenses related to gambling operations can be paid from gambling proceeds. Some related expenses cannot be paid from gambling

receipts (*e.g.*, advertising), and some are limited in amount (rent). Total expenses are limited to 50% of gross profits. After tax profits from charitable gambling can, as the name implies, only be used for charitable activities. Detailed monthly reports of charitable gambling activity must be filed.

Under these strictly controlled conditions, and from analysis of the filed reports, the Minnesota Legislature could rationally conclude that gambling operators with large gross receipts had lower expenses per dollar of gross receipts, greater net income, and greater ability to pay. The legislature could also reasonably conclude that such operators had greater economic power, both because of their larger net income and because of their larger share of the overall charitable gambling activity.

A second factor distinguishing this case from *Stewart Dry Goods* is that in *Stewart Dry Goods* the impact of the Kentucky tax on the conduct of commerce was of concern. In contrast, lawful gambling in Minnesota is limited to charitable and non-profit organizations and is intended to be a non-commercial method of raising funds for a myriad of charitable activities.

B. Minnesota's Combined Receipts Tax Serves Regulatory As Well As Revenue Raising Purposes.

The third factor distinguishing this case from *Stewart Dry Goods* is that the Kentucky tax considered in *Stewart Dry Goods* was a revenue measure without regulatory purpose. 294 U.S. at 555 (Kentucky statute essentially a revenue measure, not a police regulation). In contrast,

Minnesota, had both a revenue purpose and an equally important regulatory purpose in adopting the combined receipts tax.

Gambling is an area of significant public concern and the states have wide latitude to determine whether it will occur and, if so, how it will be controlled, regulated, and taxed. Minnesota has determined that gambling within the state is to be conducted as a mild form of entertainment to raise money for charitable activities. It is not to be a commercial activity. Appendix pages 5-7. Further, Minnesota had before it specific facts showing that its previous method of taxing the net after deducting prizes was encouraging increased total prizes and increased gambling, but a smaller share for taxes and charitable activities. Supplemental Appendix (hereinafter "Supp. App.") pages 2-4. In enacting the combined receipts tax, Minnesota intended to further its stated purpose of preventing commercialization and to ameliorate the growing dominance of large gambling operators. It acted to preserve lawful gambling as an additional funding resource for a variety of charitable activities, both large and small, as well as to increase public revenue. This purpose is clearly promoted by the tax, and, in this case, the effectiveness of the tax in achieving this regulatory purpose is confirmed by the record. Supp. App. 7-8.

C. Because Minnesota's Combined Receipts Tax Effectively Allows A Deduction Of $500,000 From Gross Receipts, It Is Not A Tax On Gross Receipts.

The final distinction between this case and *Stewart Dry Goods* is that the Kentucky tax considered in *Stewart*

Dry Goods did not allow any deduction in determining the amount of taxable sales and taxed all sales. In contrast, Minnesota does not impose any tax on the first $500,000 of combined receipts. Each charitable gambling operator effectively is permitted to deduct $500,000 from its combined receipts in determining its tax. Thus, Minnesota's combined receipts tax is in this respect a "net" tax, taxing only the amount in excess of $500,000.

In this respect Minnesota's tax is like the graduated tax on dividends received which was approved in *Welch v. Henry*, 305 U.S. 134 (1938). In that case the taxable amount was the dividends received less an arbitrary deduction of $750. Although the appellant had urged that the tax was invalid under *Stewart Dry Goods*, the tax was upheld without comment on that point.

The foregoing shows that *Stewart Dry Goods* is factually and legally distinguishable from this case. The decision of the Minnesota Supreme Court therefore does not conflict with a controlling decision of this Court.

II. THE *STEWART DRY GOODS* DECISION HAS NOT BEEN EXPANDED BY THIS COURT TO OTHER GROSS RECEIPTS TAXES AND ITS HOLDING HAS BEEN DISTINGUISHED MANY TIMES.

Following the decision in *Valentine v. Great Atlantic & Pacific Tea Co.*, 299 U.S. 32 (1936) (per curiam), *Stewart Dry Goods* has been distinguished by this Court and has not been broadly applied or expanded. *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412 (1937), upheld a graduated license tax based upon the number of stores in the chain. *New York Rapid Transit Corp. v. City of New York*, 303

U.S. 573 (1938), held that *Stewart Dry Goods* did not bar a flat gross receipts tax. It also cited with approval the decision in *Clark v. City of Titusville*, 184 U.S. 329 (1902), and stated that gross receipts from an occupation constitute an appropriate measure of the privilege of engaging in that occupation. *New York Rapid Transit*, 303 U.S. at 583.

There are, in addition, numerous decisions of this Court upholding graduated taxes which predate *Stewart Dry Goods*. *Stewart Dry Goods* either distinguished these cases or did not specifically address them. Many are cited in *Stewart Dry Good's* strong dissent by Justice Cardozo, joined by Justices Brandeis and Stone. These cases indicate additional grounds which distinguish *Stewart Dry Goods*. *See e.g., Fox v. Standard Oil Co. of New Jersey*, 294 U.S. 87 (1935) (upholding graduated license tax on chain stores base upon the number of stores); *Pacific American Fisheries v. Territory of Alaska*, 269 U.S. 269 (1925) (upholding graduated tax on canning factories based upon cases packed); *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916) (upholding graduated income tax rates); *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61 (1913) (upholding graduated theater license tax based upon ticket prices); *Magoun v. Illinois Trust & Savings Bank*, 170 U.S. 283 (1898) (upholding graduated inheritance tax rates).

State courts have also distinguished *Stewart Dry Goods*. In *Heyman v. Mahin*, 275 N.E.2d 421 (Ill. 1971), *cert. denied*, 405 U.S. 1075 (1972), and in *S. Bloom, Inc. v. Mahin*, 329 N.E.2d 213 (Ill. 1975), the Illinois Supreme Court upheld an inversely graduated discount for cigarette tax, distinguishing *Stewart Dry Goods*. In *Bloom*, the tax discount rate (allowed to cigarette distributors for the cost of collecting the tax) decreased as the volume of sales

increased. Thus, the rate of tax required to be remitted to the state increased as the volume of sales increased.[5]

California Co. v. State, 348 P.2d 382 (Colo. 1959), *appeal dismissed*, 364 U.S. 285 (1960), upheld a graduated gross receipts tax on gross income derived form production of oil and gas. After extensively reviewing the case law, including *Stewart Dry Goods*, the court concluded that the federal authorities did not require that the tax be held invalid. The court also observed that, as in this case, and unlike the tax in *Stewart Dry Goods*, the Colorado tax applied only to one type of activity. 348 P.2d at 394-95.

Homestake Mining Co. v. Johnson, 374 N.W.2d 357 (S.D. 1985) upheld a graduated tax on gross receipts from mining based upon the amount mined. The court distinguished *Stewart Dry Goods* and stated that the frequency and character of the mining were permissible grounds to justify graduation of the tax.

Paducah Automotive Trades Ass'n v. City of Paducah, 211 S.W.2d 660 (Ky. 1948), upheld a graduated license tax based upon the volume of gross receipts. The court distinguished *Stewart Dry Goods*, but its analysis is unclear because the ordinance is not contained in full in the opinion.

Finally, the use of graduated tax rates in other areas suggests that there are additional circumstances to which the holding in *Stewart Dry Goods* does not apply. *See, e.g.*, 26 U.S.C.A. § 2001 (Supp. 1993) (estate taxes); Minn. Stat.

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[5] For example, for the first $700,000 of tax, the distributor was required to remit 97-7/9% of the tax. For the next $700,000 of tax, the distributor was required to remit 98-2/9% of the tax.

§ 290.06, subd. 1 (1986) (corporate franchise taxes); Minn. Stat. § 295.34 (1990) (gross earnings taxes); 26 U.S.C.A. § 4001 (Supp. 1993) (luxury tax on vehicles).

In summary, there are ample factual and legal bases to distinguish *Stewart Dry Goods* from this case. Because *Stewart Dry Goods* has not been expanded and there is no direct conflict between this case and *Stewart Dry Goods*, there is no compelling federal issue to be decided by this Court. The regulation and taxation of charitable gambling is therefore best left to the states.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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CASE TYPE: OTHER CIVIL

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Brainerd Area Civic Center, Brainerd Amateur Hockey Association, National Exchange Club of Little Falls, Little Falls Youth Hockey Association, Ski Gull, Inc., March of Dimes, Climb, Inc., Cedar Riverside People's Center, and Exchange Club of S.W. Minneapolis,

Plaintiffs,

vs.

Commissioner of Revenue,

Defendant.

Court File No.
MC 92-005324

AFFIDAVIT OF DENNIS J. ERNO IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Minnesota Multiple Sclerosis Society and Epilepsy Foundation of Minnesota, Inc.,

Plaintiffs,

vs.

Commissioner of Revenue,

Defendant.

Court File No.
MC 92-005325

STATE OF MINNESOTA)
) ss:
COUNTY OF RAMSEY)

DENNIS J. ERNO, states the following under oath:

1. I make this affidavit from my own personal knowledge and from official records and reports by the Department of Revenue and other State agencies.

2. I am presently the Supervisor of Revenue Planning and Research for the Minnesota Department of Revenue.

3. In 1989 I was the Assistant Commissioner of Revenue responsible for Local Government Services and Special Taxes, including the taxes on lawful gambling (also called charitable gambling).

4. In 1980 I participated with the Governor's Office, the House, the Senate and representatives of the lawful gambling organizations during the regular legislative session and special session in the consideration of lawful gambling tax and regulatory issues.

5. The following information, derived from analysis of reports filed by lawful gambling operators, from representatives of the association of lawful gambling organizations (to which the plaintiffs to this action belonged), and from representatives of lawful gambling operators was considered by the Department of Revenue, the Governor's Office, the Senate and the House in formulating the statutes enacted in 1989:

a. Gross receipts are the most common and widely recognized measure of the comparative size of lawful gambling operations.

b. The expenses (including fixed costs) of the lawful gambling operators having larger

gross receipts ("larger operations") comprised a smaller percentage of their gross receipts than average.

c. The expenses (including fixed costs) of the lawful gambling operators having smaller gross receipts ("smaller operators") comprised a larger percentage of their gross receipts than average.

d. Larger operators were able to spread fixed costs over greater sales volume, they had economies of scale, they had more bargaining power, and they had professional management rather than relying on volunteers.

e. Because larger operators had lower expenses per dollar of gross receipts, they were able to pay-out and did pay-out more prize money per dollar of gross receipts than average. Smaller operators were unable to match the price pay-outs of the larger operators because of their higher expenses.

f. Customers tended to patronize gambling operations where the prize money pay-outs were higher.

g. Larger operators could and did outbid smaller ones for prime gambling locations.

h. Higher prize money pay-outs lowered the percentage of gross receipts paid in taxes and the percentage of gross receipts available for charitable activity.

i. An increasing share of gross receipts were captured by larger operators and larger operators were becoming more dominant.

j. Community based gambling operators tended to be smaller operators.

k. the forecast for lawful gambling activity was for annual growth of one percent or less because lawful gambling activity had leveled off and new forms of gambling activity (the state lottery and Indian casino gambling) were expected to compete with lawful gambling.

6. The Governor's Office and the legislature considered applying the sales tax to gross receipts from lawful gambling. However this was rejected as detrimental to the smaller operators.

7. The graduated combined receipts tax was intended to raise tax revenues and to ameliorate the trend toward dominance by the larger gambling operators.

8. The graduated combined receipts tax was intended to take from the larger operators a larger portion of their lawful gambling gross receipts in taxes and to force larger gambling operators to lower their prize pay-outs.

9. Attached as Exhibit A and incorporated herein is the House Research Information Brief entitled "Charitable Gambling in Minnesota," revised June 1988, that briefly summarizes some information about lawful gambling. It was a source of information for those participating in the formulation of the 1989 laws affecting lawful gambling.

10. Attached as Exhibit B and incorporated herein is the House Research Information Brief entitled "charitable Gambling in Minnesota" revised October, 1989. It is a revision of the prior report that reflects laws enacted in 1989.

11. Attached as Exhibit C and incorporated herein are graphs of Gross Revenues/Consumer Losses After Prize Payouts by Type of Gambling.

12. Attached as Exhibit D and incorporated herein is a graph of lawful gambling (charitable gambling) gross receipts by quarter.

13. Attached as Exhibit E and incorporated herein is a table of lawful gambling gross receipts, prizes, net receipts, taxes, expenses and net proceeds.

/s/ Dennis J. Erno
DENNIS J. ERNO

Subscribed and sworn to before
me on May 15th, 1992.

/s/ Cheryl J. Neary
Notary Public

[stamp]
CHERYL J. NEARY
Notary Public – Minnesota
Ramsey County
My commission expires Oct. 21, 1993

[Attached Exhibits Are Omitted
From This Supplemental Appendix]

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Brainerd Area Civic Center, Brainerd Amateur Hockey Association, National Exchange Club of Little Falls, Little Falls Youth Hockey Association, Ski Gull, Inc., March of Dimes, Climb, Inc., Cedar Riverside People's Center, and Exchange Club of S.W. Minneapolis,

Plaintiffs,

vs.

Commissioner of Revenue,

Defendant.

Court File No.
MC 92-005324

AFFIDAVIT OF WILLARD M. MUNGER, JR.

Minnesota Multiple Sclerosis Society and Epilepsy Foundation of Minnesota, Inc.,

Plaintiffs,

vs.

Commissioner of Revenue,

Defendant.

Court File No.
MC 92-005325

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

Willard M. Munger, Jr., being first duly sworn, states and deposes as follows:

1. I am the Executive Director of the Minnesota Multiple Sclerosis Society ("M.S. Society") and make this affidavit in support of plaintiffs' motion for summary judgment.

2. The M.S. Society is a charitable organization devoted to research, education, care and treatment with respect to multiple sclerosis and related disabilities.

3. For a number of years, the M.S. Society has conducted lawful gaming activities throughout the state. The proceeds from those activities are used to fund our programs of research, care and treatment of the disabled throughout Minnesota.

4. The combined receipts tax enacted by the Legislature has had a disastrous effect on both the M.S. Society and the people it serves. During the fiscal year ending September 30, 1989, the M.S. Society had gross receipts from charitable gaming (largely from pulltabs) of approximately $40,000,000. This generated a profit of $2.1 million which was applied to the Society's charitable mission.

5. The combined receipts tax went into effect on October 1, 1989. This had an immediate and drastic effect on our operations. By the end of the fiscal year ending

9-30-91, our annual revenues from charitable gaming had decreased to $25.6 million and our profits had decreased to $1.3 million.

6. We tried strenuously to make up the deficit from other sources. Despite some significant increases in revenues from non-gaming sources, we were forced to make cutbacks of approximately $750,000 in our services to the disabled.

7. The reason for the drastic decrease in revenues is very simple. Before the combined receipts tax went into effect, the payout on pulltabs was approximately 85%. If we had maintained the same payout level after the tax went into effect, we would have been operating at a loss. Accordingly, we were forced to reduce the payout to our customers in order to generate funds to pay the tax. Since virtually all of our receipts are taxed at the highest rate, we were forced to reduce our payout more than anyone else.[1] Our customers quickly discerned this and simply took their business elsewhere.

8. The loss of business also had a drastic effect on the tax revenues collected by the State. As can be seen from the following table, the combined receipts taxes which we paid to the State of Minnesota, dropped from approximately $180,000 per month when the tax was enacted to approximately $135,000 per month when we filed our claim for a refund:

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[1] In contrast, a small gaming operation, with revenues of less than $500,000 would have incurred no tax and would not have had to reduce its payout at all.

Month	Amount
Oct. 89	$180,741
Nov. 89	$194,737
Dec. 89	$173,451
Jan. 90	$178,228
Feb. 90	$155,192
Mar. 90	$184,501
Apr. 90	$169,714
May 90	$162,734
Jun. 90	$156,961
Jul. 90	$115,900
Aug. 90	$141,630
Sep. 90	$139,459
Oct. 90	$135,824
Nov. 90	$133,252
	$2,222,324

FURTHER AFFIANT SAYETH NOT.

Dated: April 23, 1992

/s/ Willard M. Munger, Jr.
Willard M. Munger, Jr.

Subscribed and sworn to before
me this 23rd day of April, 1992.

/s/ Daniel W. Schermer
Notary Public

[stamp]
DANIEL W. SCHERMER
Notary Public, Hennepin County, Mn
My commission expires Apr. 1, 1993